

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	CG Docket No. 02-278
Rules and Regulations Implementing the	)	CC Docket No. 92-90
Telephone Consumer Protection Act of 1991	)	

**I. Introduction**

Pursuant to the Federal Communications Commission (“FCC or Commission”) Notice of Proposed Rulemaking and Memorandum Opinion and Order (“Notice”) issued on September 18, 2002,<sup>1</sup> the Office of the People’s Counsel for the District of Columbia (“OPC-DC” or “Office”) submits comments on the Commission’s proposed amendments to its rules implementing the Telephone Consumer Protection Act of 1991 (“TCPA”).<sup>2</sup> Specifically, the Commission proposes to amend its rules on a telemarketer’s use of autodialers, prerecorded messages and fax machines, to adopt additional rules to protect individuals’ privacy while permitting legitimate telemarketing business practices, and to establish a national registry (“registry”) for consumers who do not wish to receive telemarketing phone calls.

The Office believes a national do-not-call registry is necessary, appropriate and otherwise in the public interest of consumers and should complement state-enacted do-not-call legislative initiatives that offer consumers greater protections from abusive trade practices. OPC submits that a collaborative effort between the FCC and Federal Trade Commission (“FTC”) in establishing additional protections for consumers will capture business entities governed by the FCC as well as those businesses exempted from the

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<sup>1</sup> FCC 02-250, 17 FCC Rcd 17459 (2002).

FTC's authority under the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 ("TCFAPA").

As the statutory representative of District of Columbia utility ratepayers, OPC-DC welcomes the opportunity to comment on the establishment of a national registry proposed in the Notice in an effort to assist the Commission in its efforts to protect consumer privacy interests. The following comments reflect OPC-DC's belief that a coordinated federal-state scheme is essential in protecting ratepayers from abusive sales practices originating within and outside of the District of Columbia.

### **Summary of OPC-DC's Position**

Succinctly stated, OPC-DC recommends:

- The Federal Communications Commission ("FCC") adopt further restrictions to protect consumers from unwanted telephone calls from telemarketers that invade the privacy of their homes.
- OPC supports the creation of a national registry because the proposed amendments properly balance the privacy interests of consumers with the continued development of competition in the telecommunications market.
- A national registry should not preempt state-enacted do-not-call registries, but should complement state legislation thereby acting as a deterrent to unwanted and fraudulent calls made by intrastate and interstate telemarketers.
- The FCC should require companies to acknowledge receipt of a consumer's request to register on a Do-Not-Call List within 30 calendar days.
- The FCC should require telemarketers to fully disclose their identity to consumers.

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<sup>2</sup> Pub. L. No. 102-243, 105 Stat. 2394, codified at 47 U.S.C. § 227.

- OPC Recommends the FCC Enact Regulations That Mirror Amendments Proposed by the FTC to Reduce Inconsistencies Between the Agencies.

## **II. Jurisdiction**

The Office is acting under authority granted by Section 34-804, *et seq.* of the District of Columbia Code to represent the people of the District of Columbia in proceedings that involve the interests of users of the products and services furnished by public utilities under the jurisdiction of the Public Service Commission.<sup>3</sup> The Office's interest in this proceeding is to further the interests of D.C. consumers in reaping the benefits of a vigorous, robust and effective telecommunications market while balancing the need to protect District of Columbia ratepayers' privacy interests. OPC has learned through consumer inquiries and community outreach activities that District consumers, in particular senior citizens, are concerned about the onslaught of telemarketing sales calls that endlessly invade the privacy of their homes. Moreover, consumers often state that they do not know whom to contact to register on a do-not-call list. Accordingly, OPC submits it is imperative that consumers are educated and become aware of available options for registering on the do-not-call registry, reporting violations, and filing complaints.

## **III. Discussion**

### **A. A National Do-Not-Call Registry Should Complement State-Enacted Registries Affording Consumers Additional Protections from Unwanted Calls.**

In response to the Commission's query on whether the existence of state-administered do-not-call lists obviates the need for a single national database,<sup>4</sup> OPC believes a national registry is necessary and appropriate. More importantly, a national

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<sup>3</sup> D.C. CODE ANN. § 34-804 (2001).

registry implemented jointly by the FCC and the FTC should not preempt state-enacted do-not-call regulations. The proposed national registry should complement state-enacted registries in an effort to protect local consumers from unsolicited telemarketing sales calls placed by telemarketers. Do-Not-Call lists are often compiled as a result of customer requests submitted either orally or through written correspondence in accordance with varying company policies or state regulations. OPC submits that a single national database will minimize consumer confusion and protect consumers from inconsistencies resulting from differing state regulations and company policies.

A national registry creates a “one-stop”, centralized and uniform reporting mechanism for consumers to eliminate their names from various companies marketing lists – instantaneously. Consumers should be allowed to sign onto the registry by various means, for example, telephoning the FCC’s calling center, regular postal mail, electronic mail, as well as the Internet at no additional cost to the consumer. OPC-DC submits that the proposed registry does not unreasonably burden telemarketers particularly since there are less intrusive means available for business entities to reach consumers for selling their goods and services, for example radio, television, bill inserts, and postal mailings.

It will ease the burden on consumers from having to repeatedly monitor and take meticulous notes on the companies that have contacted them, and subsequently notify those companies that they want to be placed on the do-not-call list. The cycle is endless.

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<sup>4</sup> Notice, ¶ 66.

**B. OPC-DC Recommends the FCC Require Companies Acknowledge Receipt of a Consumer's Request to Register on a Do-Not-Call List Within 30 Calendar Days.**

In response to the FCC's inquiry on whether a company should be required to notify consumers that they have received a request to register on a do-not-call list,<sup>5</sup> OPC-DC recommends the FCC require companies to respond affirmatively to a consumer's request within 30 calendar days so that a consumer can verify their request has been received and processed. Consumers often complain that they must call a business several times before the request to have their name removed is processed. However, OPC-DC notes that a consumer can only *presume* its request has been processed since a business is not obligated to acknowledge a customer's request to be placed on a do-not-call list. Companies should send an affirmative acknowledgment to a consumer corresponding to the medium in which the consumer sent their request, *i.e.*, a request sent by electronic mail should be responded to by electronic mail.

More importantly, a national registry must include an educational component that will inform consumers on the procedure for placing their name on a national, state, or company-administered do-not-call telemarketing list. A do-not-call registry is rendered ineffective if a consumer does not know who or where to call to place their name on a do-not-call list. Moreover, a consumer's registration on a national do-not-call list should supersede a consumer's registration on a company-specific do-not-call list, unless the consumer has given express authorization to that particular company.

### **C. Telemarketers Should Fully Disclose Their Identity to Consumers.**

The Commission seeks comment on whether telemarketers using an automated calling system should be prohibited from blocking consumers' caller ID.<sup>6</sup> OPC-DC supports stricter regulations that prevent telemarketers from blocking or circumventing their identity from consumers. OPC-DC receives many complaints from consumers who must buy additional telephone services features to prevent "blocked" calls from passing into their home. Consumers should not have to expend additional monies to prevent telemarketers from deliberately blocking their identity. The calling party's identification should be fully disclosed to the called party in order for the consumer to effectively screen calls received in their homes. OPC-DC recognizes that companies using multi-channel trunks, i.e. T-1 may not be able to transmit their identification, however, to the extent it is technologically feasible, the Commission should prohibit telemarketers from deliberately blocking their identity from consumers.

### **D. OPC Recommends the FCC Enact Regulations That Mirror Amendments Proposed by the FTC to Reduce Inconsistencies Between the Agencies**

OPC submits that additional monitoring and compliance requirements such as the "safe harbor" provision in the Telemarketing Sales Rule proposed by the FTC will further protect consumer privacy interests and ensure companies make a good faith effort in monitoring and complying with the new regulations.<sup>7</sup> Under many state do-not-call regulations, business entities are often relieved from liability simply because they have purchased a do-not-call list and established procedures to comply with state regulations.<sup>8</sup>

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<sup>5</sup> Notice, ¶ 17.

<sup>6</sup> Notice, ¶ 26.

<sup>7</sup> See, 47 U.S.C. § 227, Part 310.4(b)(2).

<sup>8</sup> The District of Columbia Committee on Consumer and Regulatory Affairs of the Council of the District of Columbia's recently proposed Bill 14-186 contains a provision relieving businesses from liability if it

There is no post-purchase monitoring to verify business entities are complying and enforcing federal or state-enacted do-not-call regulations. OPC recognizes that human error cannot be avoided and, therefore, businesses that make a good faith effort in complying with federal and state regulations should not be penalized for one violation of the FCC's regulations. However, consumers should be permitted to lodge a complaint with the appropriate federal or state agency or file suit in a state court if he or she has received more than two telephone calls within a six-month period by the same company to discourage consumers from filing frivolous complaints.

#### **IV. Conclusion**

The Office respectfully requests the Commission to consider and incorporate its comments and recommendations in amending regulations that govern telemarketers' business practices. The Office's recommendations strike a proper balance in protecting

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privacy interests of consumers with the continued business development in the telecommunications market.

Respectfully submitted,

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